

1 S.129

2 Introduced by Senators Sears, Baruth, Doyle, Galbraith, MacDonald, and

3 White

4 Referred to Committee on

5 Date:

6 Subject: Labor; workers' compensation; third party liens

7 Statement of purpose of bill as introduced: This bill proposes to require that an
8 insurer's lien arising out of the payment of medical expenses under the
9 workers' compensation statutes be reduced in the same proportion as an
10 injured employee's recovery, if the recovery is reduced due to limited liability
11 insurance or other cause.

12 An act relating to workers' compensation liens

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 21 V.S.A. § 624 is amended to read:

15 § 624. DUAL LIABILITY; CLAIMS, SETTLEMENT PROCEDURE

16 * * *

17 (e)(1) In an action to enforce the liability of a third party, the injured
18 employee may recover any amount which the employee or the employee's
19 personal representative would be entitled to recover in a civil action. Any
20 recovery against the third party for damages resulting from personal injuries or

1 death only, after deducting expenses of recovery, shall first reimburse the
2 employer or its workers' compensation insurance carrier for any amounts paid
3 or payable under this chapter to date of recovery, and the balance shall
4 forthwith be paid to the employee or the employee's dependents or personal
5 representative and shall be treated as an advance payment by the employer on
6 account of any future payment of compensation benefits. Reimbursement
7 required under this subsection, except to prevent double recovery, shall not
8 reduce the employee's recovery of any benefit or payment provided by a plan
9 or policy that was privately purchased by the injured employee, including
10 uninsured-under insured motorist coverage, or any other first party insurance
11 payments or benefits.

12 (2) If a lien or subrogation claim that arose out of the payment of
13 medical expenses or benefits under this chapter exists in respect to a claim of
14 personal injury or death and the injured employee's recovery is diminished by
15 the inability to collect the full value of the claim due to limited liability
16 insurance or other cause, the lien or subrogation claim shall be diminished in
17 the same proportion as the injured employee's recovery is diminished.
18 Disputes arising under this subchapter shall be arbitrated by either the order of
19 the Commissioner or by mutual agreement of the parties.

20 * * *

1 Sec. 2. 21 V.S.A. § 643a is amended to read:

2 § 643a. DISCONTINUANCE OF BENEFITS

3 Unless an injured worker has successfully returned to work, an employer
4 shall notify both the ~~commissioner~~ Commissioner and the employee prior to
5 terminating benefits under either section 642 or 646 of this title. The notice of
6 intention to discontinue payments shall be filed on forms prescribed by the
7 ~~commissioner~~ Commissioner and shall include the date of the proposed
8 discontinuance, the reasons for it, and, if the employee has been out of work
9 for 90 days, a verification that the employer offered vocational rehabilitation
10 screening and services as required under this chapter. All relevant evidence,
11 including evidence that does not support discontinuance in the possession of
12 the employer not already filed, shall be filed with the notice. The liability for
13 the payments shall continue for ~~seven~~ 21 days after the notice is received by
14 the ~~commissioner~~ Commissioner and the employee. If the claimant disputes
15 the discontinuance and if, despite good faith efforts, the claimant is unable to
16 obtain documentation supporting its position within the 21-day time limit, the
17 claimant may request in writing to the Commissioner an extension of the
18 21-day limit. The extension shall be specific as to the number of days needed
19 and the reason for the extension and must be received by the Commissioner
20 prior to the end of the 21-day limit. A copy of the request for an extension
21 shall be provided to the employer at the time the request is made to the

1 Commissioner. Those payments shall be made without prejudice to the
2 employer and may be deducted from any amounts due pursuant to section 648
3 of this title if the ~~commissioner~~ Commissioner determines that the
4 discontinuance is warranted or if otherwise ordered by the ~~commissioner~~
5 Commissioner. Every notice shall be reviewed by the ~~commissioner~~
6 Commissioner to determine the sufficiency of the basis for the proposed
7 discontinuance. If, after review of all the evidence in the file, the
8 ~~commissioner~~ Commissioner finds that a preponderance of all the evidence in
9 the file does not reasonably support the proposed discontinuance, the
10 ~~commissioner~~ Commissioner shall order that payments continue until a hearing
11 is held and a decision is rendered. Prior to a formal hearing, an injured worker
12 may request reinstatement of benefits by providing additional new evidence to
13 the ~~department~~ Department that establishes that a preponderance of all
14 evidence now supports the claim. If the ~~commissioner's~~ Commissioner's
15 decision, after a hearing, is that the employee was not entitled to any or all
16 benefits paid between the discontinuance and the final decision, upon request
17 of the employer, the ~~commissioner~~ Commissioner may order that the employee
18 repay all benefits to which the employee was not entitled. The employer may
19 enforce a repayment order in any court of law having jurisdiction.

